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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR CONCEPCION,

Defendant and Appellant.

A148279

(Solano County
Super. Ct. No. FCR317588)

Defendant Oscar Concepcion appeals after a contested violation of his post-release community supervision. Defendant's counsel has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, to determine whether there are any arguable issues for review. Defendant has also been informed of his right to file supplemental briefing, and he has not done so. After our independent review of the record, we find no errors or other issues requiring further briefing, and we affirm.

BACKGROUND

In July 2013, defendant was convicted of receiving or buying a stolen vehicle, in violation of Penal Code section 496d, subdivision (a),¹ and sentenced to three years in state prison. He was released on post-release community supervision (PRCS) on January

¹ All statutory references are to the Penal Code.

25, 2015, with certain terms and conditions, to be supervised by the Solano County Probation Department.

On November 6, 2015, the Solano County Probation Department filed a petition to revoke defendant's PRCS on the grounds that he had multiple positive drug tests for amphetamine and methamphetamine from August 31 to October 22, 2015, and that he was terminated unsuccessfully from the Matrix outpatient program at the Center for Positive Change due to "excessive positive tests." On November 30, 2015, defendant admitted that he violated PRCS based on "fail[ing] to abstain from drugs." Before admitting the violation, defendant signed a written waiver of rights form, which advised defendant of his rights, the rights he was giving up, and the consequences of his admission. Defendant was reinstated on PRCS with the same terms and conditions, and ordered to serve 90 days in jail, with 80 days credit for time served.

The probation department filed a second petition to revoke PRCS on April 1, 2016. This petition alleged defendant's failure to abstain from using illegal drugs, failure to attend and complete counseling as directed, and failure to attend and complete drug treatment as directed. The probation officer's declaration stated that on March 7, 2016, defendant was "discharged from outpatient treatment. On 3/10/16 and 3/17/16 the Offender submitted to a drug test, which returned with positive results for Amphetamine and Methamphetamine. On 3/16/16, the Offender was unsuccessfully terminated from the Center for Positive Change [(CPC)]."

A contested PRCS revocation hearing was held on May 3, 2016. Defendant was represented by counsel. The sole witness was Jennifer Eaton, defendant's probation officer in Solano County. Eaton had supervised defendant since July 2015. He was required to participate in counseling at the CPC, which she described as a "one-stop-shop for services" for individuals on probation, in February and March. Defendant told Eaton that he planned to move to Stockton, California. Eaton started the process of attempting to transfer defendant's PRCS to San Joaquin County but told defendant that during the transfer process, he was still "required to do what was asked of him from Probation."

On February 23, 2016, defendant told Eaton he was homeless. Defendant missed three CPC meetings in March 2016. Another Solano County probation officer informed Eaton that typically she terminates CPC after a probationer misses three meetings. On March 12, the Solano County Probation Department received notice that the San Joaquin County Probation Department had denied the PRCS transfer request because it could not make contact with defendant.²

Defendant provided drug samples to the probation department on March 10 and March 17, 2016. The test results “confirmed that he tested positive for methamphetamine.” Eaton testified that on January 26, 2016, defendant had admitted use of methamphetamines to her.

The trial court found defendant in violation of his grant of PRCS, stating, “[h]e was unsuccessfully terminated from the Center for Positive Change and he was obligated to complete that program. [¶] Also, he submitted two positive drug tests. . . . So the test—the collection date of March 10th, high levels; the collection date of March 17th, lower levels, but still positive. [¶] So I’ll find him in violation for failing to totally abstain from the use of illegal drugs and also for failing to attend and complete counseling and/or drug treatment as directed.

The court reinstated defendant on PRCS, and imposed a sanction of 180 days in jail, with 96 total days credit for time served.

Defendant filed a notice of appeal on May 6, 2016.

REVIEW

We have reviewed the entire record as required by *People v. Wende*, *supra*, 25 Cal.3d 436. Our independent review reveals no arguable legal issues within the meaning of *People v. Wende* that require further briefing.

Defendant was at all times represented by counsel who protected his rights and interests. Defendant received notice and a hearing on his PRCS violation and was

² Eaton intended to tell defendant that the transfer request had been denied on March 17 when he went to the probation department, but he was arrested that day for the positive drug test.

represented by counsel at the hearing. Substantial evidence supports the trial court's finding of a violation.

The sanction imposed was lawful. We have reviewed the credits calculations and discern no issues on which we require further briefing.

The judgment is affirmed.

Miller, J.

We concur:

Kline, P.J.

Richman, J.

A148279, *People v. Concepcion*